

### **Remarks/Arguments**

The foregoing amendments to the claims are of formal nature, and do not add new matter. Claims 119-123, 125-126 have been canceled without prejudice or disclaimer to claim their subject matter in subsequent continuation or divisional applications. Accordingly, Claims 124, 129-131, 135-142 are now pending in this application. Claim 124 has been amended to remove references to the polypeptide and claim 139 has been amended to recite "(a)n isolated nucleic acid molecule consisting of a fragment of the nucleic acid sequence of SEQ ID NO: 350, or a complement thereof, of at least 20 nucleotides in length that hybridizes under stringent conditions" that more clearly defines what the Applicant considers is the invention. The rejections to the presently pending claims are respectfully traversed.

### **Continuity**

The Examiner asserts that Applicants have not complied with conditions to receive benefit of an earlier filing date under 35 U.S.C. 119(e) because allegedly, the provisional patent applications although disclosing the same experimental assays, do not impart utility to the instant invention. Applicants respectfully traverse.

Applicants submit that the instant invention has been modified to remove references to polypeptides. the gene amplification assay disclosed in U.S. Provisional Application No. 60/141,037 clearly recites utilities for the instantly claimed nucleic acids. Hence, Applicants believe they are entitled to the benefit of the above provisional application. The Examiner is respectfully requested to reconsider this application's priority based on this clarification.

### **Claim Rejections – 35 U.S.C. §101 and §112, First Paragraph**

Claims 119-126, 129-131 and 135-145 are rejected under 35 U.S.C. §101 since allegedly "none of the asserted utilities are specific to the claimed nucleic acids, since such can be applied to any nucleic acid." Claims 119-126, 129-131 and 135-145 were further rejected under 35 U.S.C. §112, first paragraph, allegedly "since the claimed invention is not supported by either a specific and substantial asserted utility or a well established utility, one skilled in the art would not know how to use the claimed invention".

In view of the cancellation of claims 119-123 and 125-126 without prejudice or disclaimer, this rejection is moot for these claims. Further, Claim 124 has been amended to remove any reference to the polypeptide of SEQ ID NO: 351 and claim 135 has been amended

for clarity to recite "the nucleic acid molecule consisting of a fragment of the nucleic acid sequence of SEQ ID NO: 350, or a complement thereof, of at least 20 nucleotides length that hybridizes under stringent conditions..." Therefore, dependent claims 135-145 also recite this recitation.

Accordingly, the currently amended claims have utility and further are enabled; thus, Applicants believe that these rejections under 35 U.S.C. §101 and §112, first paragraph, utility rejections should be withdrawn.

**Claim Rejections - 35 U.S.C. § 112, First Paragraph - Written Description**

Claims 119-123 are rejected under 35 U.S.C. §112, first paragraph, as containing subject matter which was not described in the specification in such a way as to reasonably convey to one skilled in the relevant art that the inventor, at the time of filing, had possession of the claimed invention.

In view of the cancellation of claims 119-123 and 125-126, the amendments to claims 124 and 135, and the discussions above, Applicants respectfully request that this rejection be withdrawn.

The present application is believed to be in *prima facie* condition for allowance, and an early action to that effect is respectfully solicited.

Please charge any additional fees, including any fees for additional extension of time, or credit overpayment to Deposit Account No. 08-1641, referencing Attorney's Docket No. 39780-2730 P1C63 and direct any calls in connection with this application to the undersigned at the number provided below.

Respectfully submitted,

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